CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 512

THE UNITED STATES OF AMERICA

vs.

ROBERT K. MALCOLM

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED OCTOBER 13, 1930

(35434)

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THE UNITED STATES OF AMERICA

VS.

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18098—30

1 In United States Circuit Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA, APPELLANT
vs.
ROBERT K. MALCOLM, APPELLEE
No. 6243

Appeal from the United States District Court for the Northern District of California

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit under section 239 of the Judicial Code

Statement of case

Robert K. Malcolm and Esther Jarrett Malcolm are husband and wife and citizens of the United States. Since October 1, 1920, they have continuously maintained their domicile in the State of California. During the year 1928 Robert Malcolm received a salary of $3,600 for personal services rendered as an officer of the Liberty Farms Company, a California corporation. Under the laws of the State of California this income was community property. On March 1, 1929, the husband and wife filed separate returns of their income for Federal income-tax purposes. Each reported one-half of the salary of $3,600 received in 1928 by the husband, and each fully paid the amount shown to be due on the return. It is admitted that all income taxes due from either husband or wife for the year 1928 have been fully paid if, as a matter of law, they had a lawful right to make such separate returns under the provisions of sections 11, 12, and 51 of the revenue act of 1928.

2 After the husband had filed his income-tax return for the calendar year 1928, as set out above, the commissioner, upon an audit and examination, determined that his return was incorrect in that the salary of $3,600 should have been reported by the husband alone, and an income tax paid thereon by him, instead of both husband and wife reporting it at $1,800 on each return. Accordingly the commissioner determined against the husband a deficiency in income tax amounting to $18.39. An assessment in this amount was then made and collected from the husband, the plaintiff herein, together with interest amounting to $1.12. A claim for refund was thereafter filed and rejected by the commissioner. From a judgment for this amount in plaintiff's favor, the defendant has appealed.

Questions certified

For a proper decision of the above-entitled cause, now pending on appeal and submitted for consideration, instructions are respectfully requested of the Supreme Court in the following questions of law, concerning which we are in doubt:

(1) Under the applicable provisions of the revenue act of 1928 must the entire community income of a husband and wife domiciled in California be returned and the income tax thereon be paid by the husband?

(2) Has the wife under section 161 (a) of the Civil Code of California such an interest in the community income that she should separately report and pay tax on one-half of such income?

Dated October 9, 1930.

FRANK H. RUDKIN,
CURTIS D. WILBUR,
Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

(Indorsed:) Certificate of the United States Circuit Court of Appeals for the Ninth Circuit under section 239 of the Judicial Code. Filed October 9, 1930. Paul P. O'Brien, clerk.

A true copy. Attest: October 9, 1930.

[SEAL.] PAUL P. O'BRIEN, *Clerk.*

(Indorsement on cover:) File No. 35434. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 512. The United States of America vs. Robert K. Malcolm. Certificate. Filed October 13, 1930. File No. 35434.

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